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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVE SCHNETZLER

Appeal 2009-006705
Application 10/083,557¹
Technology Center 2400

Before JAY P. LUCAS, JOHN A. JEFFERY, and DEBRA K. STEPHENS,
Administrative Patent Judges.

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL²

¹ Application filed February 27, 2002. The real party in interest is Intel Corp.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant appeals from a final rejection of claims 1 to 21 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm the rejections.

Appellant's invention relates to maintaining persistence to a single remote server that is accessed through the Internet (Spec. 1, ¶ [0001]). In the words of Appellant:

[A] load balancer determines if [a] URL request includes the identity of one of [the] servers. If the URL request does not include a server ID, then [the] load balancer forwards the URL request to one of [the] servers based on known load balancing algorithms or techniques.

(Spec. 4, ¶ [0015]).

[The] load balancer adds a server ID to each of the URLs included in [a] received HTML page that correspond to an HTML page or query located on [the] servers. The server ID corresponds to the particular server ... that sent the HTML page to [the] load balancer. Using [an] example, and assuming that the HTML page was received from server 43, the URL would be changed to www.xxx.com?Sticky=server43, where “[server]43” is the server ID for server 43.

(Spec. 5, ¶ [0018]).

The following claim illustrates the claims on appeal:

Claim 1:

1. A method comprising:
 - receiving a request for the data from a client computer;
 - sending the request to a first server of a plurality of servers;
 - receiving the data from the first server; and
 - adding an identity of the first server to the data and forwarding the data to the client computer.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

O'Neil	US 6,128,279	Oct. 03, 2000
Barrera	US 6,748,448 B1	Jun. 08, 2004 (Dec. 13, 1999)
Bodwell	US 6,954,783 B1	Oct. 11, 2005 (Nov. 10, 2000)

REJECTIONS

The Examiner rejects the claims as follows:

R1: Claims 1 to 21 stand rejected under 35 U.S.C. § 103(a) for being obvious over O'Neil in view of Barrera.

R2: Claims 1 to 21 stand rejected under 35 U.S.C. § 103(a) for being obvious over O'Neil in view of Bodwell.

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue specifically turns on whether O’Neil and Barrera render obvious Appellant’s method step of “adding an identity of the first server to the data and forwarding the data to the client computer,” as recited in claim 1.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Disclosure

1. Appellant has invented a method, load balancer, and medium for maintaining persistence to a single remote server accessed by a client computer via the Internet (Spec. 1, ¶ [0001]; Fig. 1). Appellant’s claimed method includes the step of “adding an identity of the first server to the data and forwarding the data to the client computer.” (Claim 1).

O’Neil

2. The O’Neil reference discloses maintaining persistence to a single remote server accessed by a remote source via the Internet. (*See* col. 9, ll. 23 to 27 and 29 to 31; Fig. 4, step S405, “route requests to server dedicated to

processing requests for this URI" and step S406, "process requests in server dedicated to processing requests for the URI.")

Barrera

3. The Barrera reference discloses identifying a specific data storage device controller using a URL (col. 8, ll. 8 to 12).

Bodwell

4. The Bodwell reference discloses adding an identifier of a target web server to data and forwarding the data to a client web browser (col. 4, l. 64 to col. 5, l. 10).

PRINCIPLE OF LAW

Appellant has the burden on appeal to the Board to demonstrate Examiner error. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

ANALYSIS

*Arguments with respect to the rejection
of claims 1 to 21
under 35 U.S.C. § 103(a) [R1, R2]*

The Examiner rejects the noted claims for being obvious over O'Neil in view of Barrera or Bodwell, pages 4 to 10 of the Examiner's Answer.

Appellant argues that Barrera does not teach the claimed invention because Barrera discloses that a storage device controller, which is separate from any server, performs retrieval of any requested file (App. Br. 6, top). According to Appellant, the embedded physical I/O address of a resource

file does not include an identity of a server responsible for forwarding the requested data to the client computer (*e.g.*, as in claim 1) because Barrera does not require using servers at all in its retrieval process (*id.*).

The Examiner responds that Barrera's storage device controller operates no differently from Appellant's claimed "first server" since Barrera's controller responds to client requests in the same manner (*i.e.*, responding to client requests by providing requested data to the client) as the claimed "first server." (Ans. 11, bottom).

We disagree with Appellant for the following reasons. We find that Appellant has invented a method, load balancer, and medium for maintaining persistence to a single remote server accessed by a client computer via the Internet (FF#1). Appellant's claimed method includes the step of "adding an identity of the first server to the data and forwarding the data to the client computer." (*Id.*).

In comparison, the O'Neil reference discloses maintaining persistence to a single remote server accessed by a remote source via the Internet (FF#2). Barrera discloses identifying (the claimed "adding" step) a specific data storage device controller (Appellant's claimed "first server") using a URL (FF#3). Moreover, the Bodwell reference also discloses adding (Appellant's claimed "adding" step) an identifier (the claimed "identity") of a target web server (the claimed "first server") to data and forwarding the data to a client web browser (the claimed "client computer") (FF#4).

We find that Barrera discloses the claim limitation "adding an identity of the first server to the data and forwarding the data to the client computer" (claim 1) since a person of ordinary skill in the art would have recognized Barrera's storage device controller as being similar to Appellant's claimed

“first server.” We find unconvincing Appellant’s argument that Barrera’s storage device controller is “separate from any servers” (App. Br. 6, top) since the Examiner reads the claimed “first server” on Barrera’s “storage device controller.” The location of Appellant’s “first server” relative to other elements of claim 1 is not recited as a claim limitation. Thus, we find that the Barrera controller’s location relative to “any servers,” as argued by Appellant above, is not relevant to the obviousness inquiry. In accordance with our factual findings and our above-stated analysis, we conclude that Appellant has not demonstrated error in the obviousness rejections R1 in this regard.

Appellant then argues that “the embedded address of Barrera is a physical I/O address, otherwise known as a MAC address or Ethernet address (e.g., 0000 0A27 94 40 FC).” (App. Br. 6, bottom). Appellant argues that “[a] MAC is not the same as, for example, an IP identifying address.” (*Id.*). Instead, Appellant contends that “[a] MAC address is a hardware address used for interface with the network medium in the OSI network standard.” (*Id.*). Appellant concludes that “a MAC address is not sufficient to describe an identity of a first server as specifically recited in claim 1.” (*Id.*).

In reply, the Examiner states that Barrera discloses embedding an IP address to identify the server at column 8, ll. 1 to 10 (Ans. 13, bottom).

We note that Appellant points to nothing in the Specification that would impart a *Phillips*³-type specific meaning to the term “identity.” In

³ “To be his own lexicographer, a patentee must use a ‘special definition of the term [that] is clearly stated in the patent specification or file history.’” *The Laryngeal Mask Company Ltd. v. Ambu A/S*, 618 F.3d 1367, 1372 (Fed.

failing to do so, Appellant fails to specify why Barrera's MAC address would not have been equated with Appellant's claimed "identity" at the time the invention was made. We thus find Appellant has not demonstrated error in the rejection R1 in this regard.

Appellant makes several other arguments concerning the cited secondary references Barrera and Bodwell. For example, Appellant contends that Barrera fails to disclose the "adding" step of claim 1 since the reference merely describes the request and transfer of a resource file between computers and since the URL address cited by the Examiner at column 7, lines 55 to 63, is merely sent as an identifier to aid in locating a requested resource file stored on the web server host (App. Br. 8, top). Appellant also argues that merely because mention is made of sending a URL address as a part of a retrieval process to be sent to the requesting party in column 6, ll. 20 to 30, the disclosure does not qualify as the "adding" step, as claimed (App. Br. 8, bottom).

Regarding the rejection R2, Appellant argues that Bodwell's embedding (of the target server's name and the special identifier) is directed to communication between an intermediate server and a target server to achieve the end of routing all future requests of the relevant target server through the relevant intermediate server (App. Br. 10, bottom). Thus, Bodwell fails to describe at least adding an identity of a server to data and

Cir. 2010) (internal citations omitted). "The specification does not clearly convey the patentee's intent to appoint a special meaning to the term Having concluded that the patentee did not act as his own lexicographer in this case by clearly defining a claim term, we must determine the ordinary meaning of [the term] as used in these claims to one of skill in the art in light of the specification and prosecution history." *Id.*

forwarding the data to a client computer (*id.*). Moreover, Appellant contends that adding the data of a first server that provides the data is not the same as adding the identity of an unrelated intermediate server (App. Br. 11, bottom).

With respect to each of the above-stated arguments as to the secondary references, we adopt and endorse the Examiner's findings and conclusion of obviousness (Ans. 4, top to 10, middle). We refer Appellant to the "Response to Argument" section of the Examiner's Answer for further details (Ans. 10, bottom to 15, top). Accordingly, we find that Appellant has not shown error in the obviousness rejections R1 and R2.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting claims 1 to 21.

DECISION

We affirm the Examiner's obviousness rejections R1 and R2 of claims 1 to 21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)

AFFIRMED

Appeal 2009-006705
Application 10/083,557

peb

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